



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

JUL 25 1989

Mr. Russell V. Randle
Patton, Boggs & Blow
2550 M. Street, N.W.
Washington, D.E. 20037-1350

RE: Collierville Site

Dear Mr. Randle:

Enclosed is a second draft of the Consent Order which incorporates some of the changes discussed at our meeting on July 14. I have marked the changes on your copy with red ink.

I have not made changes in the portions of the order which address Work Plan or Feasability Study deliverables. Felicia Barnett is reviewing those sections, based on discussions during our meeting, and we will discuss language for those sections at a later date.

It is my understanding that you will be submitting language for a couple of sections, such as the indemnification clause and Site access. Also, as set out in your letter of July 21, there are several areas which will be discussed further, such as force majeure, dispute resolution and stipulated penalties.

Please note that the enclosed document is a working draft only. Any changes which we make in the consent order will be subject to approval once we have proposed language for the complete Consent Order. Since there will be more changes made in this draft, I have not changed the paragraph numbering. I will do that when we have a final draft.

Please give me a call once you have had a chance to review this draft so that we can discuss the remaining open issues.

Sincerely yours,

Carol F. Baschon
Assistant Regional Counsel

Enc.



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draft sent PRP
7/25/89

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:

COLLIERVILLE SITE,
COLLIERVILLE, SHELBY COUNTY
TENNESSEE

CARRIER CORPORATION
Respondent

Proceeding under Section 104,
106(a), and 122(d)(3) of the
Comprehensive Environmental
Response, Compensation and
Liability Act of 1980, as
amended, 42 U.S.C. §§ 9606 9604

EPA Docket No:

ADMINISTRATIVE ORDER

I. JURISDICTION

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This Administrative Order by Consent (Consent Order) is entered into by the United States Environmental Protection Agency (EPA) with the Carrier Corporation (Respondent) pursuant to the authority vested in the President of the United States by Section 104, Section 106(a), and Section 122(d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9604, 9606(a), and 9622(d), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), P.L. 99-499. This Consent Order is issued under authority delegated to the Administrator of the Environmental Protection Agency (EPA) by Exec. Order No. 12580, (Jan. 23, 1987), 52 Fed. Reg. 2923 (Jan. 29, 1987), further delegated to the Regional Administrator of Region IV EPA, and redelegated to the Director, Waste Management Division.

Respondent agrees to undertake all actions required of it by the terms and conditions of this Consent Order for the conduct and implementation of a Remedial Investigation and Feasibility Study at the Collierville site in Collierville, Shelby County, Tennessee (the Site) and any additional work agreed to pursuant to Section IV below.

Solely for the purposes of this Consent Order, the Respondent consents to and agrees not to contest EPA jurisdiction to issue this Consent Order. Respondent consents to jurisdiction for purposes of entry and enforcement of this Consent Order by EPA, provided however, the Respondent does not admit, accept, concede, or acknowledge the determinations, allegations, findings of fact, and conclusions of law made by EPA in this

Consent Order and specifically reserves the right to contest any such determinations, allegations, findings, and conclusions in any proceeding regarding the Site other than actions brought by EPA to enforce this Consent Order.

In entering into this Consent Order, the mutual objectives of EPA and Respondent are: (A) to determine fully the nature and extent of any threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at and from the Site (Remedial Investigation); and (B) to evaluate alternatives for the appropriate extent of any remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants at and from the Site (Feasibility Study).

The activities conducted pursuant to this Consent Order will be consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and will be subject to the express EPA approvals as set forth below.

II. FINDINGS OF FACT

For the purposes of this Consent Order, EPA finds that:

- A. Respondent is Carrier Corporation, a New York Corporation with its principal place of business in Syracuse, New York.
- B. The Respondent is the owner and operator of the Collierville Site ("the Site") in Collierville, Tennessee.
- C. The Site was previously owned by the City of Collierville and was leased to the Respondent (or its corporate predecessors) from 1967 until early 1988. Respondent has owned the Site since early 1988.
- D. The Respondent has operated a facility for the manufacture of hot water heaters, air conditioners, and heat pumps ("the facility") at the Site from 1967 until the present.
- E. Trichlorethylene ("TCE") has been released into the environment at the Site as the result of a sudden malfunction of a degreasing machine on June 20 and 21, 1979 and as a result of the rupture of an underground pipe in January 1985.

[F. Prior to 1980, Respondent operated an unlined lagoon, approximately 214 cubic feet in volume, for the purpose of containing clarifier sludges. TCE has been detected in the lagoon area. The material in the lagoon and some contaminated soil was removed prior to November 1980, and the lagoon area was filled.

[G. TCE has been detected in soil samples taken from the Site. TCE has also been detected in groundwater monitoring wells located on site.

[H. TCE has been detected in two City of Collierville municipal wells located 2000 feet northwest of the plant at concentrations in excess of the National Primary Drinking Water Regulation in the raw water, although finished water still complies with the National Primary Drinking Water Regulation.

[I. Respondent represents that it has expended substantial sums conducting soil and groundwater investigations and remedial work at the Site.

III. CONCLUSIONS OF LAW

[A. EPA concludes that the Site is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. Respondent is a person as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

[C. Trichlorethylene is a hazardous substance as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

D. Hazardous substances, as defined in Section 101(14) of CERCLA, have entered the environment at the Site through spills, leaks, and discharges, and are currently present there.

E. The past, present or potential migration of hazardous substances from the Site constitute an actual or threatened release as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

IV. DETERMINATIONS

Based on the foregoing Findings of Fact and Conclusions of Law and the entire record of this proceeding, the Director of the Waste Management Division has determined that:

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- [deletion
- A. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.
 - B. The actions required in this Consent Order are consistent with the National Contingency Plan, 40 C.F.R. Part 300 et seq.
 - C. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a)(1), EPA has determined that the Respondent is qualified to conduct the RI/FS and, if the RI/FS is conducted in accordance with this Consent Order, will properly and promptly do so.

V. ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and Determinations, Respondent is hereby ordered and directed to undertake the following activities, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § ~~9606(a)~~: 9604

- A. Within twenty-one (21) days of the effective date of this Consent Order, Respondent shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study (RI/FS Work Plan). All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance, including but not limited to, the "Interim Final Guidance for conducting RI/FS under CERCLA" (OWSER Directive 9355.3-01). The Work Plan shall include a site background summary and a detailed description of the tasks to be conducted during the RI/FS. It shall also include the methodology, information to be developed and deliverables for the activities to be performed during the RI/FS, as well as their corresponding schedules of completion. The RI/FS work plan must include a schedule for deliverables as well as a schedule for completing the RI/FS.
- B. Within seventeen (17) days of the receipt of EPA notification of disapproval of all or part of the RI/FS Work Plan, Respondent shall amend and submit to EPA a revised RI/FS Work Plan. In the event of subsequent disapproval of the RI/FS Work Plan, EPA retains the right to conduct a complete RI/FS pursuant to its authority under CERCLA, as amended.
- C. Within twenty-one (21) days of EPA's approval of the RI/FS Work Plan, Respondent shall submit to EPA the sampling and analysis plan. This plan shall consist of a field sampling plan (FSP) and a quality assurance project plan (QAPP).

- a. The FSP will define in detail the sampling and data gathering activities, objectives, and information to be gathered, with locations and frequencies, on the project.
- b. The QAPP will describe the project objectives and organization, functional activities, quality assurance and quality control protocols, sampling procedures, sample custody, analytical procedures and detection levels, and data reduction, validation, and reporting.

If EPA disapproves of the sampling and analysis plan, in whole or in part, Respondent shall amend and submit to EPA a revised sampling and analysis plan, within seventeen (17) days of receipt of EPA's notification of the disapproval.

- D. Within twenty-one (21) days of EPA's approval of the RI/FS Work Plan, Respondent shall submit to EPA the site health and safety plan. This plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910.
- E. Any additional revision of the RI/FS Work Plan, or any part thereof, which is determined to be necessary by EPA shall be submitted and reviewed in accordance with the applicable portions of paragraphs A and B above. All EPA approved revisions of the RI/FS Work Plan will be dated as of the date of EPA approval, and such revisions will be considered to be part of the RI/FS Work Plan.
- E. The Respondent shall implement the RI/FS Work Plan which has been approved by EPA. The EPA approved RI/FS Work Plan, and any EPA approved amendments thereto, shall be attached to and incorporated into this Consent Order as Attachment 1. This RI/FS work will be conducted in accordance with the standards, specifications, and schedule contained in the RI/FS Work Plan.
- F. Within seven (7) days of the approval by EPA of the documents required under paragraphs C and D above, Respondent shall begin implementing the remaining tasks of the RI/FS Work Plan.
- G. Respondent shall provide monthly written progress reports to EPA according to the schedule contained in the RI/FS Work Plan. At a minimum, these progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order, (2) include all results

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of sampling and tests and all other data received by Respondent, and (3) include all plans and procedures which are completed subsequent to EPA approval of the RI/FS Work Plan and which come in during the month preceding the report, as well as such actions, data, and plans which are scheduled for the next month. These reports are to be submitted to EPA by no later than the tenth day of each month following the commencement of work by Respondent under the RI/FS Work Plan.

- H. Within thirty (30) days of completion of the field work, Respondent shall submit a site characterization summary to EPA. The major activities of the site characterization include implementation of the work plan and sampling and analysis plan and schedules therein through field investigations, sample analyses, and data evaluation. Respondent shall investigate and define site physical characteristics, sources of contamination and the nature and extent of contamination, and shall evaluate site characteristics.
- I. Respondent shall notify EPA within seven (7) days of completion of field activities, providing a summary of what activities were undertaken.
- J. Respondent shall evaluate, subject to EPA approval and in accordance with the Work Plan, actual and potential risks for human health and the environment. The major components of the risk assessment include contaminant identification, exposure assessment, toxicity assessment and risk characterization. During the risk assessment, Respondent shall provide EPA with the following deliverables, which are subject to EPA approval:
 - 1. Outline of Risk Assessment. Within sixty (60) days of EPA approval of the Work Plan, Respondent shall submit an outline of the format, components and methodologies to be included in the risk assessment.
 - 2. Summary Identifying Contaminants and List of Proposed Indicator Chemicals. Within thirty (30) days of the completion of initial field work, Respondent shall submit a list of hazardous substances present at the site, the media they are in, their locations and a list of proposed indicator chemicals (or chemicals of concern) with the known corresponding ambient concentrations of these contaminants, and a list of chemical-specific ARARs.

3. Memoranda on Exposure Scenarios and Fate and Transport Models. Within fifteen (15) days of submittal of the indicator chemicals, Respondent shall submit memoranda describing the exposure scenarios with a description of the assumptions made and the use of the data. If fate and transport models are used, Respondent shall submit a brief description of the models intended to be used and assumptions made in the use of the models.
- [K. Within the period set out in the Work Plan, Respondent shall submit a draft Remedial Investigation (RI) report which includes a summary of results of the field activities to characterize the site and nature and extent of contamination, the fate and transport of contaminants, and results of the baseline risk assessment. If EPA disapproves of the RI report in whole or in part, Respondent shall amend and submit to EPA a revised RI report within forty-five (45) days of receipt of EPA's written notification of disapproval.
- [L. The Respondent shall develop and screen alternatives for remediation of the site. The major components of the development and screening of alternatives include the development and evaluation of a range of appropriate waste management options. The range shall include options with varying amounts and types of treatment, containment, and a no action alternative. During their development and screening of alternative, Respondent shall provide EPA with the following deliverables:
1. Memorandum on Remedial Action Objectives. Within fifteen (15) days of submittal of the Draft RI report, Respondent shall submit a memorandum on remedial action objectives for EPA review and approval.
 2. Final Screening Results Memoranda. Within fifteen (15) day of EPA approval of the memorandum on remedial action objectives, Respondent shall submit memoranda summarizing the final results of the alternative screening process. The memoranda shall also specify action specific ARARs for each alternative considered.
- M. The Respondent shall provide a detailed analysis of alternatives. The major components of the detailed analysis of alternatives consist of an analysis of each option against a set of evaluation criteria and a comparative analysis of all options with respect to each other. During the detailed analysis of alternatives, Respondent shall provide EPA with the following deliverables:

1. "Nine Criteria" Analysis Memorandum. Within fifteen (15) days of submittal of the final screening results memorandum, Respondent shall submit a memorandum summarizing the results of the nine criteria evaluation.
2. Remedial Alternatives Comparative Analysis Report. Within thirty (30) days of EPA approval of the nine criteria analysis, Respondent shall submit a summary of the results of the comparative analysis performed between the remedial alternatives.
3. Presentation to EPA. Within ten (10) days of submission of the comparative analysis, Respondent and its contractors shall conduct a presentation to EPA at which Respondent shall present and discuss findings of the remedial investigation, remedial action objectives, alternatives evaluated in the FS, and the comparative analysis.
4. Draft Feasibility Study Report. Within fifteen (15) day of presentation to EPA, Respondent shall submit a draft FS report. The Report as amended by EPA, and the administrative record, shall provide the basis for the proposed plan under CERCLA §§ 113(k) and 117(a) by EPA and shall document the development and analysis of remedial alternatives. Respondent shall refer to Table 6-5 of the RI/FS guidance for report content and format. If EPA disapproves of the draft FS report in whole or in part, Respondent shall amend and submit to EPA a revised FS report within forty-five (45) days of receiving EPA's written notification of disapproval.

[N. In the event EPA disapproves any preliminary or final report, EPA retains the right to request the amendment of such reports, to perform additional studies, and to conduct a complete RI/FS pursuant to its authority under CERCLA, and to take other action, including but not limited to enforcement action to recover its costs pursuant to its authority under CERCLA.

[P. Respondent shall assist EPA in preparing for presentations at meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues.

Q. EPA reserves the right to comment on all deliverables. If EPA issues a notification of disapproval for a deliverable,

EPA shall specify the deficiencies in writing. When directed by EPA to do so, Respondent shall incorporate and integrate all information and comments supplied by EPA into the final RI/FS report.

- R. If EPA amends or disapproves any report, plan, or other submission under this section and the Respondent disagrees with the amendment or disapproval, Respondent shall have the right to note its disagreement with EPA in writing.
- S. In the event that Respondent amends and revises a report upon receipt of EPA disapproval, if there is subsequent EPA disapproval of the revised report, EPA retains the right to: allow Respondent an additional opportunity to submit an acceptable report; or in lieu of Respondent, perform its own additional studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondent for its costs; or seek any other appropriate relief.
- T. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS, Respondent shall incorporate and integrate information supplied by EPA into the final RI/FS report.
- U. Failure of EPA to expressly approve or disapprove of Respondent's submissions within the specified time period(s) shall not be construed as approval by EPA.
- V. All work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or geologist with expertise in hazardous waste site cleanup and hydrogeological investigations. Within twenty-one (21) days of the effective date of this Consent Order, the Respondent shall notify EPA in writing regarding the name, title and qualifications of such engineer and of any contractors or subcontractors to be used in carrying out the terms of this Consent Order. EPA reserves the right to disapprove for cause any engineer, geologist, contractor and/or subcontractor selected for the RI/FS and shall specify the reason for such disapproval. In the event of such disapproval, Respondent shall notify EPA within 10 days of an alternate selection.
- W. EPA may determine that tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of an RI/FS in addition to EPA-approved

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[tasks and deliverables, including reports, which have been completed pursuant to this Consent Order. This Consent Order may be amended to include such additional work by mutual agreement of EPA and Respondent. Such additional work shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA. In the event the parties cannot reach agreement as to modification of this Order, EPA shall have the right to perform additional work as provided in Paragraph XIX of this Order.

VI. QUALITY ASSURANCE

- [After the date of this Order, Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, April 1, 1986) throughout all sample collection and analysis activities. Respondent shall consult with EPA in planning for, and prior to, all future sampling and analysis as detailed in the RI/FS Work Plan. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, Respondent shall:
 - A. Ensure that EPA personnel or EPA authorized representatives are allowed access to the laboratory(ies) and personnel utilized by Respondent for analyses.
 - [B. Ensure that the laboratory(ies) utilized by Respondent for analysis after the date of this Order performs such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analyses to EPA as set out in the QAPP
 - [C. Ensure that the laboratory(ies) utilized by Respondent for analyses after the date of this Order participates in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. As part of such a program, and upon request by EPA, such laboratory will perform analysis of samples provided by EPA to demonstrate the quality of each laboratory's analytical data.

VII. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

- A. Respondent shall make the results of all sampling or tests or other data generated by Respondent, or on Respondent's behalf, with respect to the implementation of this Consent

Order, available to EPA and will submit these results in monthly progress reports as described in Section VI of this Consent Order. EPA will make available to Respondent the results of sampling or tests or other data similarly generated by EPA.

- B. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA or its authorized representatives of any samples collected by Respondent pursuant to the implementation of this Consent Order. Respondent shall notify EPA not less than eight (8) days in advance of any sample collection activity.
- C. EPA or any EPA authorized representative will have authority which includes, but is not limited to, authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operating logs, and contracts related to the Site; authority to review the Respondent's progress in carrying out the terms of this Consent Order; authority to conduct such tests as EPA or the EPA Project Coordinator deems necessary; authority to use a camera, sound recording, or other documentary type equipment; and authority to verify the data submitted to EPA by Respondent.
- D. Respondent shall permit such person(s) to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph will comply with all approved health and safety plans.
- E. Respondent may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion will be adequately substantiated when the assertion is made. Analytical data will not be claimed as confidential by Respondent. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent.
- F. Respondent does not hereby waive the attorney-client or attorney work product privileges that may apply to submissions under this paragraph.

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VIII. RECORD PRESERVATION

[EPA and Respondent shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys which relate to this Order, despite any document retention policy to the contrary. After this six year period, Respondent shall notify EPA within ninety (90) days prior to the destruction of any such documents. Upon request by EPA, Respondent shall make available to EPA such records or copies of any such records.

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IX. DISPUTE RESOLUTION

If the Respondent objects to any EPA notice of disapproval or decision made pursuant to this Consent Order, the Respondent will notify EPA in writing of its objections within fourteen (14) days from the receipt of the decision. EPA and the Respondent then have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach an agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA will provide a written statement of its decision and the reasons therefore to the Respondent.

X. MODIFICATION OF THE WORK PLAN

[In the event of unanticipated or changed circumstances at the site, Respondent shall promptly notify the EPA Project Coordinator by telephone, and confirm in writing as soon as reasonably practicable, of discovery of the new or changed circumstances. In the event that EPA determines that the new or changed circumstances warrant changes in the work plan, EPA may request a modification to the work plan as provided in Paragraph V() of this Order.

XI. OTHER APPLICABLE LAWS

Respondent shall comply with OSHA requirements and shall perform all work safely. Under Section 121(e) of CERCLA, no local, state or federal permit shall be required for the portion of any removal action, including studies, or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with that provision of the statute. This Consent Order does not modify CERCLA §121(d)(3) or any regulations thereunder.

XII. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT
RECORD OF DECISION, ADMINISTRATIVE RECORD

- A. EPA retains the responsibility for the preparation and release to the public of the RI/FS report, proposed plan and record of decision in accordance with CERCLA and the NCP.
- B. EPA shall notify the Respondent which preferred alternative and final plan are selected for the Site.
- C. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent must submit to EPA such documents developed during the course of or prior to the RI/FS upon which selection of the response action may be based.

XIII. DESIGNATED PROJECT COORDINATORS

- A. On or before the effective date of this Consent Order, EPA and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA shall be directed to the Project Coordinator by mail, with copies to such other persons as EPA and Respondent may reasonably designate. Communications include all documents, reports, approvals and other correspondence submitted under this Consent Order.
- B. All documents, including reports, approvals, and other correspondence, which are required to be submitted pursuant to this Consent Order, shall be sent by certified mail or overnight express to the following addresses or to such other addresses as the EPA may hereafter designate in writing:
 - 1. Documents or correspondence to EPA shall be sent (in 7 copies - 6 bound, 1 unbound) to:

Ms. Felicia Barnett
Remedial Project Manager
EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

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2. Documents or correspondence to the Respondent shall be sent to:

Mr. Jess Walrath, Jr.
Manager, Environmental Assurance
Carrier Corporation
P.O. Box 4808
Syracuse, N.Y. 13221

- [C. EPA and Respondent each have the right to change their respective Project Coordinator. If possible, the other party must be notified in writing at least ten (10) days prior to the change.
- [D. EPA's Project Coordinator shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions (or portions of response action) as set forth in 40 C.F.R. § 300.65(b). The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.
- E. On or before the effective date of this Consent Order, EPA shall arrange for a qualified person to assist it in overseeing and reviewing the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a).

XIV. FORCE MAJEURE

[If any event occurs which causes delay in the achievement of the requirements of this Consent Order, the Respondent shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of the Respondent which could not have been overcome by due diligence. The Respondent shall promptly notify EPA's Remedial Project Manager orally and shall, within seven (7) days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which the Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances. The Respondent and EPA shall adopt all reasonable measures to avoid or minimize delay. Failure of the Respondent to comply with the notice requirements of this paragraph shall constitute

☐ a waiver of the right to request a waiver of the requirements of this Consent Order. Increased cost of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

XV. RELATIONSHIP BETWEEN THE UNITED STATES AND RESPONDENT

- Murray*
- A. The Respondent agrees to indemnify and save and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of any acts or omissions of Respondent, its employees, agents, servants, trustees, successors, or assigns, [or of any persons, including but not limited to firms, corporations] contractors, or consultants engaged in carrying out activities pursuant to this Consent Order. EPA is not a party to any contract entered into by the Respondent or its representatives at or relating to the Site.
 - B. This Consent Order shall apply to and be binding on the parties to this action, their agents, employees, successors, assigns, and contractors.
 - C. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order.
 - D. Nothing herein shall constitute or be construed as a satisfaction or release from liability for Respondent, agents, contractors, lessees, successors, or assigns, for any conditions or claims arising as a result of past operations or ownership of the site.

XVI. REIMBURSEMENT OF COSTS

At the end of each fiscal year, EPA will submit to the Respondent an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. The Respondent will, within 30 days of receipt of that accounting, remit a check for the amount of those costs made payable to the Hazardous Substance Superfund. Checks should specifically reference the identity of the Site and should be sent to:

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United States Environmental Protection Agency
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

Attn: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator. Respondent shall pay interest in the amount of % per annum for all costs not timely paid in accordance with this section.

EPA reserves the right to bring an action against the Respondent pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondent, as well as any other past and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA/SARA at this Site.

XVII. OTHER CLAIMS

Nothing in this Consent Order will constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

In entering into this Consent Order, the Respondent waives any right to seek reimbursement under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for any past costs associated with this Site, or any costs incurred in complying with this Order.

XVIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

Except for delays from events which constitute a force majeure, the Respondent will be subject to the imposition of stipulated penalties as set forth below for failure to achieve the major milestone deadlines set forth below, in Section V of this Consent Order, or in the RI/FS Work Plan, as it may be amended from time to time. Major milestone deadlines include the following:

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MAJOR MILESTONE

DEADLINE

Initial receipt of RI/FS Work Plan
by EPA

21 days after effective
date of this Consent Order

Receipt of revised RI/FS Work Plan
by EPA

17 days after receipt of
EPA notification of dis-
approval

Receipt of sampling and analysis
plan by EPA

21 days after receipt of
EPA approval of Work Plan

Receipt of revised sampling and
analysis plan by EPA

17 days after receipt of
EPA disapproval

Submission of draft RI report
to EPA

Pursuant to deadline set
out in final POP and final
RI/FS Work Plan

Submission of final RI report
to EPA

Pursuant to deadline set
out in final POP and final
RI/FS Work Plan

Submission of draft FS report
to EPA

Pursuant to deadline set
out in final POP and final
RI/FS Work Plan

Submission of final FS report
to EPA

Pursuant to deadline set
out in final POP and final
RI/FS Work Plan

Stipulated penalties will accrue as follows:

Calendar Days After Due Date, Assessment for Each Calendar Day

1-10	\$1000
11-20	\$3000
21 and over	\$5000

Payment for any stipulated penalties accrued pursuant to this
Consent Order will be sent to:

United States Environmental Protection Agency
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

Attn: Collection Officer for Superfund

within thirty (30) days of receipt by Respondent of EPA accounting of the penalties. Payment, in the form of a check, will be sent by certified mail. A copy of the Respondent's transmittal letter referencing the Site will be sent simultaneously to the EPA Project Coordinator.

The stipulated penalties set forth in this section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Respondent's failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions include, but are not limited to, a suit for statutory penalties as authorized by Sections 106 and 109 of CERCLA, a federally-funded response, and a suit for reimbursement of costs by the United States.

XIX. RESERVATION OF RIGHTS

EPA reserves the right to take any other enforcement action pursuant to CERCLA or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any other violation of law or this Consent Order.

Except as otherwise provided herein, EPA and Respondent expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by the Respondent and to request that the Respondent perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that the Respondent declines to perform any additional or modified tasks, EPA will have the right to undertake any Remedial Investigation or Feasibility Study work. In addition, EPA reserves the right to undertake removal actions or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from the Respondent thereafter for such costs which are incurred by the United States.

In the event that EPA executes its rights pursuant to this Section, the Respondent reserves any and all rights and defenses it may have pursuant to CERCLA/SARA and any other statutory or common law.

XX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between the Respondent and EPA prior to the issuance of this Consent Order concerning its terms, the Respondent agrees that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order will be the date on which it is signed by EPA.

This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments will be in writing and will have, as the effective date, the date on which such amendments are signed by EPA.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA approved plans, reports, specifications, schedules, and attachments will be considered a failure to achieve the requirements of this Consent Order.

XXI. PARTIES BOUND

This Consent Order will apply to and be binding upon the Carrier Corporation and EPA, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for either Carrier or EPA, or both.

No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or in way alter Respondent's responsibilities under this Consent Order. The Respondent will remain the Respondent under this Consent Order and will be responsible for carrying out all activities required of the Respondent under this Consent Order.

The Respondent will provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Consent Order within fourteen (14) days of the effective date of this Consent Order or date of such retention, whichever is later.

XXII. NOTICE TO THE STATE

EPA has notified the State of Tennessee pursuant to the requirements of Section 106(a) of CERCLA.

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XXIII. TERMINATION

The provisions of this Consent Order will be deemed fulfilled and this Consent Order will terminate upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated that all of the material terms of this Consent Order, and all subsequent modifications, have been completed.

IT IS SO AGREED:

BY:

For Respondent Carrier Corporation

Date

IT IS SO AGREED AND ORDERED:

BY:

Patrick M. Tobin
Director
Waste Management Division
U.S. EPA - Region IV
345 Courtland Street, NE
Atlanta, Georgia 30365

Date